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Synopsis / Résumé : JUSTICE REFORM IN MALI		
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Signed By / Signé par :	Out Format / Format sortant :	Operator / Opérateur : Gillian Chamberlain
CC :	CC :	CC :
CC :	CC :	CC :

CONTACT(S) / CONTACT(S) :

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Ottawa

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Fax # / # Facsimilé :

COMMENTS / COMMENTAIRES :

Details / Détails

Comment / Commentaire

ROUTINGS / ACHEMINEMENTS:

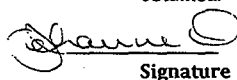
Assigned To Assigné à	Task and Notes Tâche et Notes	Asgn Date Date assigné	BF Date Date de rappel	Returned Date Date de retour
PS-SADM Chloe Simard	APPROVE	2016-10-31		2016-11-08
DMO INCOMING DM	ACTION	2016-11-08		2016-11-08
DMO-EA Suzanne	ACTION	2016-11-08		2016-11-08
PS-SADM	ACTION Returned for edits, the briefing note title needs to have the french translation into the document	2016-11-08		
DMO-BC	ACTION	2016-11-09		2016-11-14
DMO-EA	ACTION	2016-11-09		2016-11-14
DMO-DM	ACTION	2016-11-09		2016-11-14
DMO-EA Suzanne OUTGOING DM	ACTION	2016-11-10		2016-11-14
PS-SADM	ACTION	2016-11-14		

**TRAVEL, HOSPITALITY, CONFERENCE, EVENT EXPENDITURES (THCEE)  
DEPUTY MINISTER (DM) APPROVAL**

Received in Deputy Minister's Office (DMO)	DATE: N/A
Approval is required by DM	DATE: November 10 2016
Travel, Hospitality, Conference, Event	DATE: November 24 to December 12, 2016
This THCEE was previously requested in a quarterly plan?	No
This THCEE was previously requested in another Sector/Portfolio?	No
Was it approved?	N/A
Other relevant information	Request for approval for an official of the International Legal Programs Section to travel to Mali from November 24 to December 12, 2016.
The Sector/Portfolio has the budget for the expense?	Yes
The expense is within the Sector / Portfolio's CAP?	Yes
The Sector/Portfolio Direct Report has been advised of their THC cap, total planned expenditures and actual expenditures to date.	Yes
If current THC plans exceed the Sector / Portfolio CAP, steps will be taken to decrease THC plans / expenditures or cancel non-essential activities with the goal of remaining within the Sector / Portfolio CAP by year end.	N/A
Why is this request urgent and was not included in a quarterly THCEE Plan?	This request was not included in the THCEE Plan for Q4 as the request from Global Affairs Canada for Justice Canada to participate in the mission was only recently made.

The FMA has reviewed the attached THCEE One-Off request and can attest that:

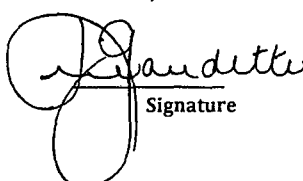
- The National Joint Council (NJC) Travel Directive has been applied.
- The TBS THCEE Directive has been respected.
- The Financial Signing Authority is appropriate.
- The necessary measures are in place to ensure that the THC CAP is respected.
- The information regarding this activity has been shared to ensure the proper level of approval is obtained.

  
Signature

4/11/2016  
Date

Johanne Ouellet

Director, Financial Management Services:

  
Signature

8.11.2016  
Date

Lise Gaudette



Department of Justice  
Canada

Ministère de la Justice  
Canada

CCM#:2016-023177

Protected B

For Approval

Action by/Deadline: 2016/11/10

s.21(1)(a)

## MEMORANDUM TO THE DEPUTY MINISTER

### Justice Reform in Mali - Réforme juridique au Mali (FOR APPROVAL)

#### SUMMARY

- Request for approval for an official of the International Legal Programs Section to travel to Mali, November 24 to December 12, 2016.
- This request did not form part of the original THCEE Plan for Q4, as the request from Global Affairs Canada for Justice Canada to participate in the mission was only recently made.

#### BACKGROUND

##### Context

Mali, officially the Republic of Mali (*République du Mali*), is a landlocked country in West Africa. Mali is the eighth-largest country in Africa. It has a population of 14.5 million. Its capital is Bamako. Mali consists of eight regions and its borders on the north reach deep into the middle of the Sahara Desert, while the country's southern part, where the majority of inhabitants live, features the Niger and Senegal rivers. French is the country's official language.

Since it obtained its independence from France in 1960, the country was for the longest time seen as a model of democratization in Africa. However, Mali started disintegrating rapidly in 2012 as the result of a military coup and the occupation of the northern regions by rebel and criminal groups. These events were rapidly followed by the deployment of French-led military forces in January 2013, which were handed over to the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) mission in July 2013.

Peace negotiations between government and two rebel coalitions concluded with the signing of an agreement in 2015 by both the government and these coalitions. While the new agreement does not envision an autonomous status for the northern regions, it

*Yes. I want to ensure proper security is in place for the employees on this trip. Please confirm*

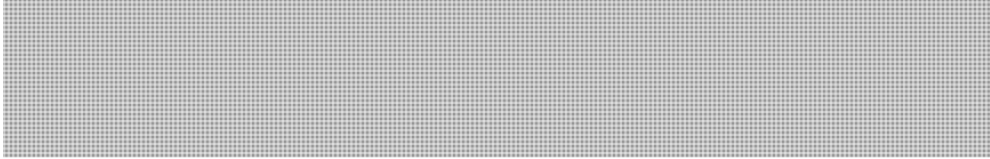
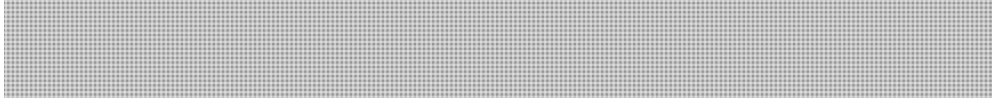
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gives a stronger impetus to decentralization, creating a critical role for these regions and a development zone consisting of the northern regions. Its implementation, however, remains challenging. The Malian state remains fragile and needs foreign assistance to strengthen its capacity.



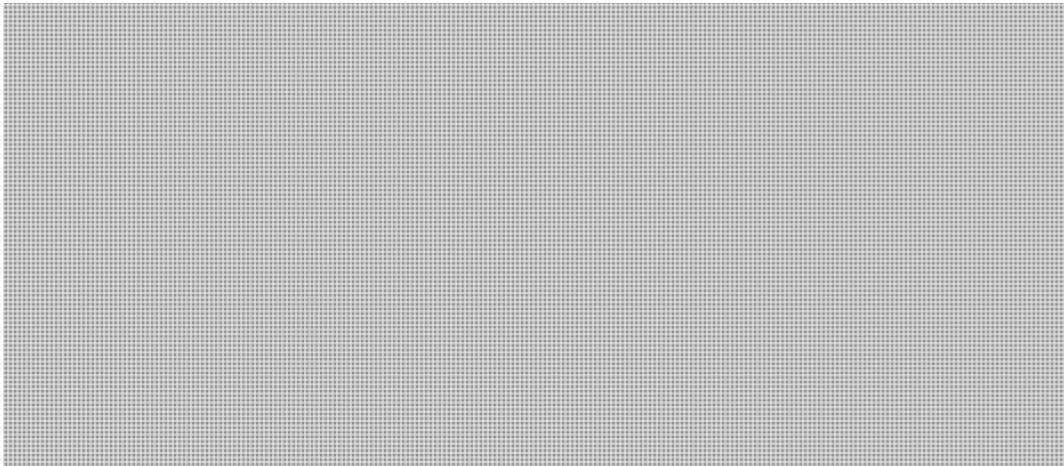
*Purpose of mission*

The mission would seek to:

- get a better sense of the overall situation in the justice sector in Mali;
- 

**KEY CONSIDERATIONS / OPTIONS**

The proposed mission is at the request of GAC and would be carried out with the full support of Canada's Embassy in Bamako.



CCM#: 2016-023177

s.21(1)(a)

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## RESOURCE IMPLICATIONS

The International Legal Programs Section is in a position to cover the necessary expenditures by reallocating to this mission a portion of the \$15,000 that was approved for travel of 3 individuals to Bogota Colombia in the Q1 THCEE (Q1-DM-146), as that travel is no longer necessary.

All travel costs are for air travel, accommodation, meal allowances, transportation and other expenses. Total cost of this mission is estimated at \$9,010.

## COMMUNICATION IMPLICATIONS - N/A

## RECOMMENDATION



### Attachments



**Prepared by:**  
Carolyn Elliott-Magwood  
Counsel  
International Legal Programs Section, Policy Sector  
613-697-2611  
Date: November 2, 2016

**Reviewed by:**  
Deborah Friedman,  
General Counsel and Director General  
International Legal Programs Section, Policy Sector  
613-946-9283  
Date: November 2, 2016

**Approved by:**  
Donald K. Piragoff  
Senior Assistant Deputy Minister, Policy Sector  
613-957-4730  
Date: 07/11/16

CCM#: 2016-023177



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Canada

s.21(1)(a)

CCM#:2016-023177  
Protected B  
For Approval  
Action by/Deadline: 2016/12/01

## MEMORANDUM TO THE DEPUTY MINISTER

### Justice Reform in Mali - Réforme juridique au Mali (FOR APPROVAL)

#### SUMMARY

- Request for amendment of travel approval to Mali for an International Legal Programs Section counsel Serge Lortie from November 24 to December 12, 2016. The return date has changed from December 12 to the 6.
- Travel was approved for Serge Lortie under activity 1 in the original THCEE.
- ILPS is requesting an amended approval because by the time our Project Officer did the booking, the reduced fares were no longer available. The airfare increased significantly.

#### BACKGROUND

##### *Context*

Mali, officially the Republic of Mali (*République du Mali*), is a landlocked country in West Africa. Mali is the eighth-largest country in Africa. It has a population of 14.5 million. Its capital is Bamako. Mali consists of eight regions and its borders on the north reach deep into the middle of the Sahara Desert, while the country's southern part, where the majority of inhabitants live, features the Niger and Senegal rivers. French is the country's official language.

Since it obtained its independence from France in 1960, the country was for the longest time seen as a model of democratization in Africa. However, Mali started disintegrating rapidly in 2012 as the result of a military coup and the occupation of the northern regions by rebel and criminal groups. These events were rapidly followed by the

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Protected B

deployment of French-led military forces in January 2013, which were handed over to the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) mission in July 2013.

Peace negotiations between government and two rebel coalitions concluded with the signing of an agreement in 2015 by both the government and these coalitions. While the new agreement does not envision an autonomous status for the northern regions, it gives a stronger impetus to decentralization, creating a critical role for these regions and a development zone consisting of the northern regions. Its implementation, however, remains challenging. The Malian state remains fragile and needs foreign assistance to strengthen its capacity.

[REDACTED]

[REDACTED]

*Purpose of mission*

The mission would seek to:

- get a better sense of the overall situation in the justice sector in Mali;

[REDACTED]

**KEY CONSIDERATIONS / OPTIONS**

The proposed mission is at the request of GAC and would be carried out with the full support of Canada's Embassy in Bamako.

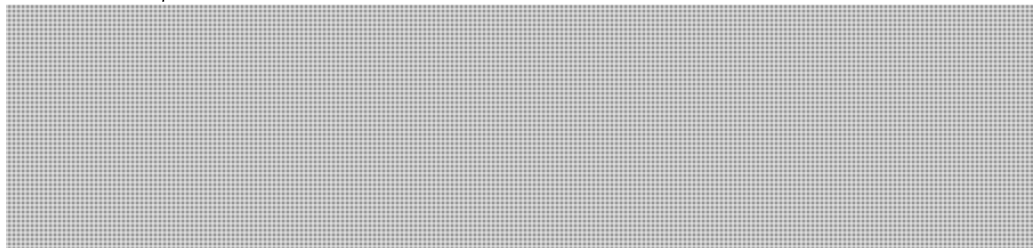
[REDACTED]

CCM#: 2016-023177

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#### RESOURCE IMPLICATIONS

The International Legal Programs Section is in a position to cover the necessary expenditures by reallocating to this mission a portion of the \$15,000 that was approved for travel of 3 individuals to Bogota Colombia in the Q1 THCEE (Q1-DM-146), as that travel is no longer necessary.

All travel costs are for air travel, accommodation, meal allowances, transportation and other expenses. Total cost of this mission is estimated at \$13,994.

#### COMMUNICATION IMPLICATIONS - N/A

#### RECOMMENDATION



Attachments



**Prepared by:**  
Carolyn Elliott-Magwood  
Counsel  
International Legal Programs Section, Policy Sector  
613-697-2611  
Date: November 29, 2016

**Approved by:**  
Donald K. Piragoff  
Senior Assistant Deputy Minister, Policy Sector  
613-957-4730  
Date: 29/11/16

CCM#: 2016-023177



**Pages 9 to / à 10**  
**are withheld pursuant to section**  
**sont retenues en vertu de l'article**

**21(1)(a)**

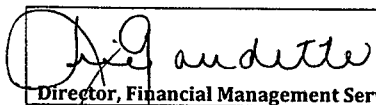
**of the Access to Information Act**  
**de la Loi sur l'accès à l'information**


**TRAVEL, HOSPITALITY, CONFERENCE, EVENT EXPENDITURES (THCEE)  
DEPUTY MINISTER (DM) APPROVAL**

Approval is required by DM	DATE: 2016-12-01
Travel, Hospitality, Conference, Event	DATE: 2016-11-24 to 2016-12-06
This THCEE was previously requested in a quarterly plan?	No
This THCEE was previously requested in another Sector/Portfolio?	N/A
Was it approved?	N/A
Other relevant information	This THCEE was previously approved as a one-off. ILPS is requesting an amended approval because by the time our Project Officer did the booking, the reduced fares were no longer available. The airfare increased significantly.
The Sector/Portfolio has the budget for the expense?	Yes
The expense is within the Sector / Portfolio's CAP?	Yes
The Sector/Portfolio Direct Report has been advised of their THC cap, total planned expenditures and actual expenditures to date.  If current THC plans exceed the Sector / Portfolio CAP, steps will be taken to decrease THC plans / expenditures or cancel non-essential activities with the goal of remaining within the Sector / Portfolio CAP by year end.	Yes
Why is this request urgent and was not included in a quarterly THCEE Plan?	This was not included in the THCEE Plan because it was requested by Global Affairs Canada (GAC) at the last minute. <u>All the costs related to this trip will be recovered therefore, no costs to Justice Canada.</u>

The FMA has reviewed the attached THCEE One-Off request and can attest that:

- The National Joint Council (NJC) Travel Directive has been applied.
- The TBS THCEE Directive has been respected.
- The Financial Signing Authority is appropriate.
- The necessary measures are in place to ensure that the THC CAP is respected.
- The information regarding this activity has been shared to ensure the proper level of approval is obtained.

 Director, Financial Management Services	Lise Gaudette Name	2016-11-30 Date
--	-----------------------	--------------------

 Financial Management Advisor (FMA)	Benoit Legris Name	2016-11-30 Date
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Department of Justice  
Canada

Ministère de la Justice  
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## Fiche d'approbation Approval Slip

*À remplir par le secteur / To be completed by sector*

DOSSIER/FILE #2016-022691

**Objet / Subject: Possible Amendments to the *Criminal Code***

Préparée par /

Prepared by: Matthew Taylor, Senior Counsel

☐

Cote de sécurité /

Security level: Protected B

Personnel de soutien /

Administrative personnel: Michelle Therien

☐

Numéro de téléphone /

Telephone number: 613 946-2215

Nombre de pièces jointes /

# of attachments:

Date limite à l'ULM /

Due at MLU: \_\_\_\_\_

**Soumise pour approbation à  
Sector approvals as required**

Initiales

Initials

Année

Year

Mois

Month

Journée

Day

PHAEDRA GLUSHEK,

Directrice et AG. SPMDP - Director and GC, CLPS

\_\_\_\_\_

CAROLE MORENCY,

DG et AGP. SPMDP - DG and SGC, CLPS

C. 2016 11 04

DONALD K. PIRAGOFF, SADM

C. 2016 11 04

WILLIAM F. PENTNEY, Deputy Minister

\_\_\_\_\_

Équipe du SM / DM-Team

\_\_\_\_\_

**Approbation/signature/examen/du ministre demandé pour le :**

**Minister's signature/approval/review requested by: \_\_\_\_\_**

**Remarques / remarks:** \_\_\_\_\_

*À remplir par l'ULM / To be completed by MLU*

**À la demande de / Requested by: Veuillez faire  
parvenir à : / Please forward to:**

**Revue interne / Seen by:** \_\_\_\_\_

**Rédaction par/ Edited by:** \_\_\_\_\_

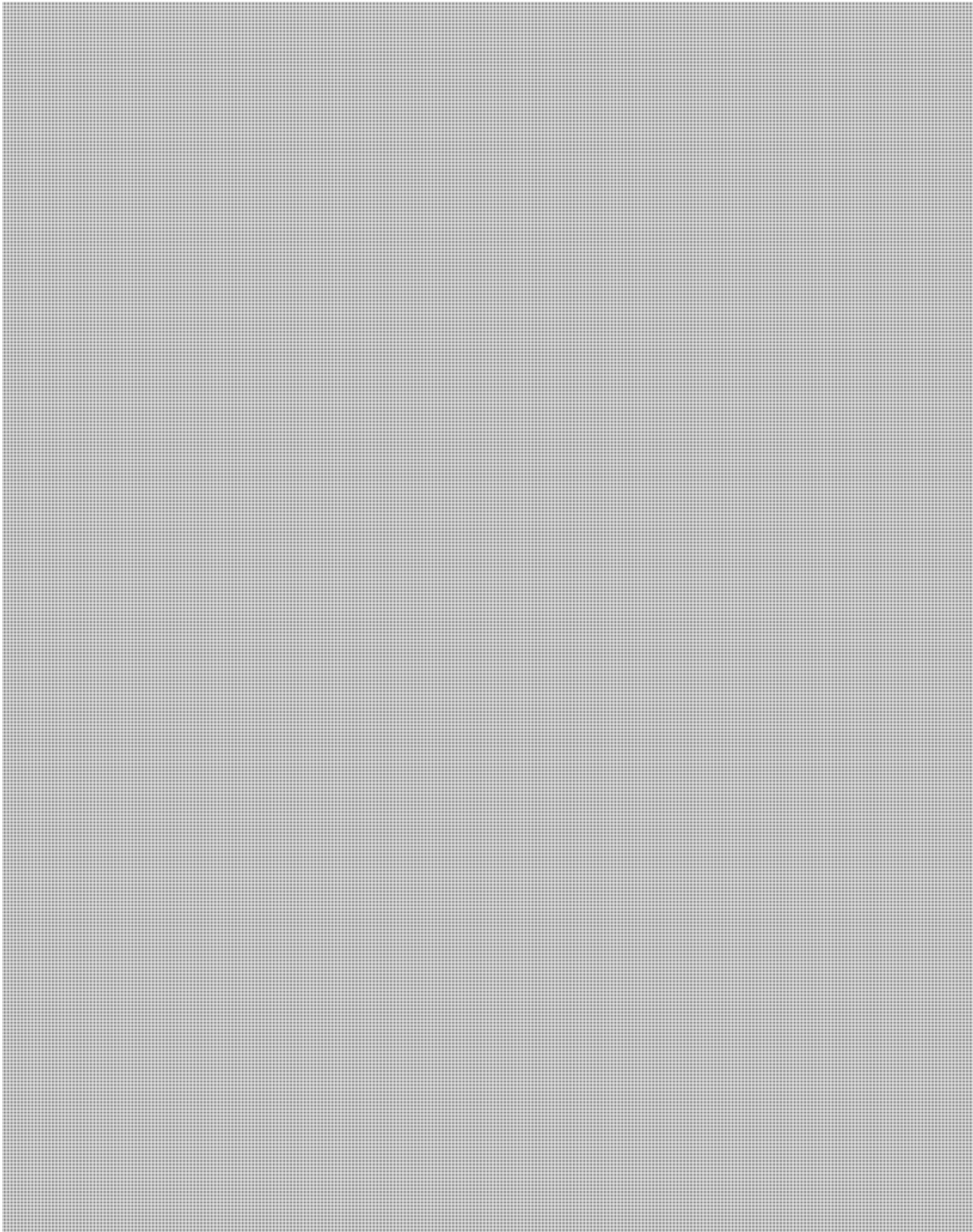
**Reçue / received:** \_\_\_\_\_

**Received in MLU:** \_\_\_\_\_

s.21(1)(a)

November 4, 2016

**Possible Amendments to the *Criminal Code***



**Pages 14 to / à 22**  
**are withheld pursuant to section**  
**sont retenues en vertu de l'article**

**21(1)(a)**

**of the Access to Information Act**  
**de la Loi sur l'accès à l'information**



Department of Justice  
Canada

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Canada

s.21(1)(a)

s.21(1)(b)

FOR APPROVAL

NUMERO DU DOSSIER/FILE #:2016-024274

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected B

**TITRE/TITLE: Criminalization of HIV Non-Disclosure**



Soumis par (secteur)/Submitted by (Sector):

Policy Sector

Responsable dans l'équipe du SM/Lead in the DM Team:

Adam Garskey

Revue dans l'ULM par/Edited in the MLU by:

Matt Ignatowicz

Soumis au CM/Submitted to MO: November 18, 2016



Department of Justice  
Canada

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Canada

s.21(1)(a)

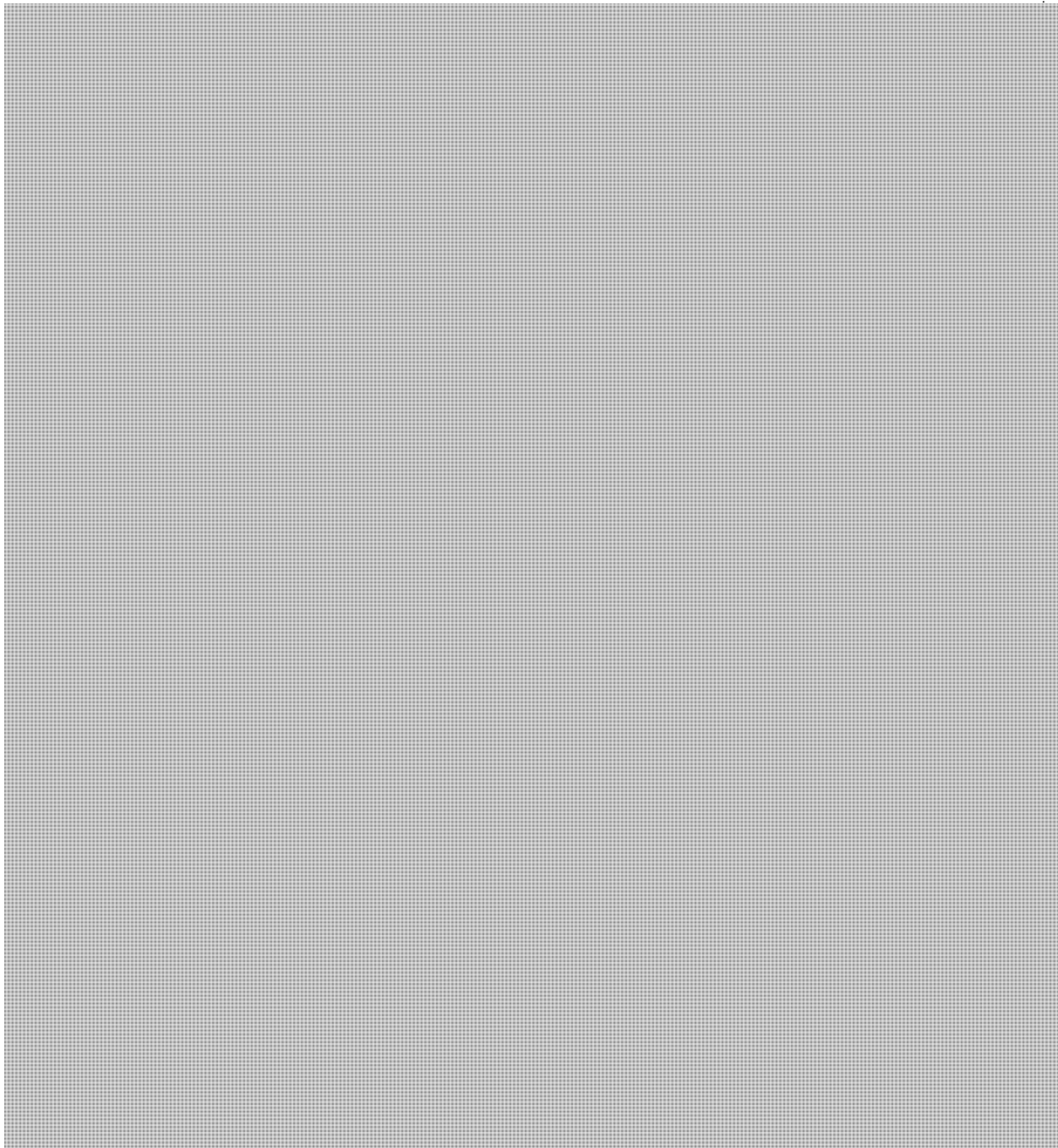
s.21(1)(b)

Protected B  
FOR APPROVAL

2016-024274

## MEMORANDUM FOR THE MINISTER

### Criminalization of HIV Non-Disclosure



**Page 25**

**is withheld pursuant to sections  
est retenue en vertu des articles**

**21(1)(a), 21(1)(b)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**



s.19(1)

s.21(1)(a)

s.21(1)(b)

**PREPARED BY**  
Nathalie Levman  
Counsel  
Criminal Law Policy Sector  
613-948-7420

signed by /  
The Honourable Jody Wilson-Raybould

*Nov. 24/16*  
Date

s.21(1)(a)

s.23



Department of Justice  
Canada

Ministère de la Justice  
Canada

FOR INFORMATION

NUMÉRO DU DOSSIER/FILE #: 2016-024290

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected B

**TITRE/TITLE: The Use of Investigative Powers Under the *Criminal Code*  
in Relation to Journalists**

**SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY**

- A number of media reports have highlighted the use of investigative powers against journalists, primarily in Québec, and expressed concern that these powers have been used inappropriately.
- Police powers under the *Criminal Code* must be exercised in conformity with Supreme Court of Canada decisions that require consideration of the special role of the media in society, in a way that is reasonable in the particular circumstances.
- The federal and Québec governments have expressed concern about these reports and have expressed an interest in reviewing existing practices. Québec has also made some administrative changes to its practices in this area to require greater oversight.



Soumis par (secteur)/Submitted by (Sector):

Policy Sector

Responsable dans l'équipe du SM/Lead in the DM Team:

Caroline Leclerc

Revue dans l'ULM par/Edited in the MLU by:

Stephanie Matte

Soumis au CM/Submitted to MO: November 24, 2016



Department of Justice  
Canada

Ministère de la Justice  
Canada

s.21(1)(a)

s.23

PROTECTED B  
FOR INFORMATION

2016-024290

## MEMORANDUM FOR THE MINISTER

### The Use of Investigative Powers Under the *Criminal Code* in Relation to Journalists

#### ISSUE



#### BACKGROUND

On October 31, 2016, *La Presse* reported that the Montreal City Police (Service de police de la Ville de Montréal) had obtained warrants to put the iPhone of *La Presse* reporter Patrick Lagacé under surveillance to see who he was interacting with over a period of several months, as well as to track his movements using the GPS in his phone. Mr. Lagacé was not himself believed to have engaged in wrongdoing; rather, police were seeking to investigate possible leaks of information to the media (Annex 1).

It appears that the warrants obtained were transmission data recorder warrants, tracking warrants, and production orders.<sup>1</sup> The requirements for obtaining the authority to use these investigative techniques under the *Criminal Code* do not include any special process for cases involving journalists, although the court can apply conditions that the judge or justice considers appropriate in issuing production orders and tracking warrants (Annex 2).

The information available about this case through media reports indicates that the activities in question were authorized by the court, pursuant to the processes for the relevant investigative powers provided for in the *Criminal Code*. Concerns have been expressed in a number of articles about the appropriateness of what occurred and the potential for a chilling effect, particularly on investigative reporting, as a result of increased awareness that police may obtain such warrants and orders against reporters.

The news media reports that in recent years, police investigations have increasingly involved accessing information about the activities of the news media in Quebec (Annex 3). Both the Québec government and the federal government have responded by announcing their intentions to review existing practices, and Québec has also begun making changes to existing practices in this area (Annex 4).

Former Private Member's Bill C-426, An Act to amend the *Canada Evidence Act* (protection of journalistic sources and search warrants), originally introduced in April 2007 (BQ MP Serge

<sup>1</sup> It appears there may also have been a wiretap authorization designed to obtain text messages that was granted by the court but never implemented.

s.21(1)(a)

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Ménard, Marc-Aurèle-Fortin) (Annex 5), was reintroduced as a response to this issue as Bill S-231, An Act to amend the *Canada Evidence Act* and the *Criminal Code* (protection of journalistic sources).

## CONSIDERATIONS

Canadian law recognizes that freedom of the press is fundamental to a democratic society and that freedom of expression, including freedom of the press and other media of communication, is protected under section 2(b) of the *Canadian Charter of Rights and Freedoms*. The common law also recognizes that journalistic sources, and any information that can be used to identify them, can be protected from disclosure, as privileged, on a case-by-case basis (Annex 5).<sup>2</sup> Once the privilege has been found, it prevents the privileged information from being disclosed in court. In the absence of a privilege, usually a witness must answer all questions posed when testifying in court. The Supreme Court has found that privilege can also be relevant to assert in relation to issuance or execution of a search warrant, and that even if there is no privilege, warrants against the media must take into account the special position of the media in society and be reasonable in the totality of the circumstances.<sup>3</sup>

<sup>2</sup> See *R. v. National Post* (2010) SCC 16 and *Globe and Mail v. Canada (Attorney General)* (2010) 2 SCR 592.

<sup>3</sup> See *R. v. National Post* (2010) SCC 16 at para 52 and para 78

**Page 30**

**is withheld pursuant to sections  
est retenue en vertu des articles**

**21(1)(a), 23**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

## ANNEXES

Annex 1: Additional information relating to the surveillance of Mr. Lagacé—Summary

Annex 2: Additional information relating to the types of authorities obtained against Mr. Lagacé  
under the *Criminal Code*

Annex 3: Additional information from news reports relating to other similar cases

Annex 4: Federal and provincial responses

Annex 5: Background on Former Private Member's Bill C-426

### PREPARED BY

Karen Audcent

Senior Counsel and Team Leader

Criminal Law Policy Section

613-957-4733

# ANNEX 1

### **Annex 1: Additional information relating to the surveillance of Mr. Lagacé - Summary**

On October 31, 2016, *La Presse* reported that the Montreal City Police had put the iPhone of their reporter Patrick Lagacé under surveillance to see who he was interacting with over a period of several months, and had tracked his movements using the GPS in his phone.

It was reported that there were 24 warrants issued by the court since the start of 2016 to authorize these actions by the Special Investigations Unit (Enquêtes spéciales de la police) charged with internal investigations of police misconduct. Some of the warrants were obtained in January 2016 and renewed in March 2016. The tracking warrant was obtained in May 2016, and other warrants were renewed. On October 27, 2016, in the course of routine judicial procedures relating to obtaining information about the investigation, Mr. Lagacé became aware of the 24 warrants issued in relation to his cell phone.

The warrants and orders were requested in an investigation of allegations of fabrication of evidence by investigators specializing in street gangs and drug trafficking. Five police officers were arrested following this internal investigation and two were charged. One of the officers was Faycal Djelidi. Investigators became aware he was in contact with Patrick Lagacé, and news articles relating to Mr. Djelidi's files were published not long after these contacts were made. None of the articles were written by Mr. Lagacé, however, and not all of them were in *La Presse*. There were leaks that compromised ongoing criminal investigations, and an investigation was opened in relation to Mr. Djelidi and the leaks; in the course of this investigation, Mr. Lagacé's cell phone came to be a target of investigation, although Mr. Lagacé was not himself believed to be engaged in criminal conduct. Mr. Djelidi was arrested in early July 2016 for criminal behaviour in relation to managing police sources and for soliciting the services of prostitutes; however, there were no charges in relation to the leaks of information.

The fact that the news reports did not first appear in *La Presse* has led Mr. Lagacé to speculate in interviews that the police were using this investigation as a pretext to investigate him and his sources generally, as he believes he has done numerous stories that have embarrassed the Montreal police. He believes these actions may also have been designed to intimidate police officers who may want to talk to a journalist.

The directors of the major newsrooms in Montreal signed an open letter on November 1, 2016, expressing their indignation and concern in the face of the surveillance of Mr. Lagacé and calling for concrete actions to protect journalistic sources, including a more burdensome procedure for obtaining a warrant for surveillance of a journalist.

*La Presse* successfully argued for an order on November 4, 2016, from the Québec Superior Court to seal the data collected by the Montreal police from Mr. Lagacé's cell phone to ensure that the phone numbers of Mr. Lagacé's sources would be kept confidential and not used by police. The Montreal police and prosecutors did not object to this request. Police have advised that, pursuant to this order, the information is on a USB key locked inside a vault and will be sealed and all copies destroyed. The media reports that further arguments about the evidence obtained from Mr. Lagacé's phone will be made on November 24, when it is expected the warrants will be unsealed. It was also reported that *La Presse* was taking legal action against the Montreal police, and that it is not known if the tracking continues as the warrants are sealed.



# ANNEX 2

**Annex 2: Additional information relating to the types of authorities obtained against Mr. Lagacé under the Criminal Code**

Three of the warrants were transmission data warrants, which permit police to obtain transmission data, which includes numbers dialled and received by Mr. Lagacé, as well as related information such as the date and time of the call.

Transmission data is defined in section 492.2 of the *Criminal Code* as data that “(a) relates to the telecommunication functions of dialling, routing, addressing or signalling; (b) is transmitted to identify, activate or configure a device, including a computer program as defined in subsection 342.1(2), in order to establish or maintain access to a telecommunication service for the purpose of enabling a communication, or is generated during the creation, transmission or reception of a communication and identifies or purports to identify the type, direction, date, time, duration, size, origin, destination or termination of the communication; and (c) does not reveal the substance, meaning or purpose of the communication.”

A tracking warrant was also obtained to permit the police to use the GPS in Mr. Lagacé's phone to track his movements. Tracking data is defined in section 492.1 of the *Criminal Code* as “data that relates to the location of a transaction, individual or thing.”

Police also reportedly obtained 20 production orders, which were used to help identify the people who were in touch with Patrick Lagacé. Some reports also seem to indicate that an authorization under Part VI of the *Criminal Code* to intercept the private communications of Mr. Lagacé may have also been obtained, possibly with the goal of authorizing collection of his text messages; however, it appears this authority may have been obtained and not used.

The provisions related to these warrants and orders were updated in the *Protecting Canadians from Online Crime Act* (former Bill C-13), which came into force in March 2015. However, the authority to track, to obtain information on numbers contacted by a telephone, and to have third parties produce relevant records are not new in the *Criminal Code*. One change made by Bill C-13 was to reflect the more intrusive capabilities of modern technology by imposing a dual threshold for the new tracking warrant that requires a higher standard of reasonable grounds to believe when tracking a thing usually worn or carried by a person, such as a cell phone.

The orders for transmission data recorder warrants, the more limited production orders, and the less invasive tracking warrants require a justice or a judge to be satisfied by information on oath that there are reasonable grounds to suspect that an offence has been or will be committed and that the tracking or transmission data or data produced under the production order will assist in the investigation of the offence. To issue the more invasive tracking warrants (as required to activate GPS tracking in a cell phone) and the general production order (that permits the court to order production of a document or data of any type in their possession or control), the justice or judge must be satisfied by information on oath that there are reasonable grounds to believe that an offence has been or will be committed and that the information sought will afford evidence respecting the commission of the offence in the case of the production order, and that tracking will assist in the investigation of the offence, in the case of a tracking warrant.

These warrants can be issued by a justice or a judge. This is consistent with what is within the scope of the actions permitted for a justice in other areas of the *Criminal Code*. For example, a justice can also issue a search warrant under section 487 of the *Criminal Code* to search any domicile, which is a much broader and more invasive investigative power than an authority to obtain information about phone numbers dialled (which cannot include content) as is authorized under a transmission data recorder warrant, or about locations of a vehicle or a cell phone, which is authorized under a tracking warrant. It would appear to be inconsistent in this context to limit the authority for these lesser tools to issuance by a judge, which change would also have operational impacts.

A justice is defined in section 2 of the *Criminal Code* as "a justice of the peace or a provincial court judge."

The much more invasive investigative authority of a wiretap (authorization to intercept private communications) is, however, limited to judges. Under subsection 185(1) of the *Criminal Code*, an application for an authorization shall be made to a judge of a superior court of criminal jurisdiction or a judge as defined in section 552.

# ANNEX 3

### **Annex 3: Additional information from news reports relating to other similar cases**

The Surêté du Québec (SQ) seized a laptop computer of a *Journal de Montréal* reporter, Michael Nguyen, at the courthouse in September 2016, several months after a compromising video of a judge of the Quebec court was revealed. The judicial council, charged with disciplining judges, complained that the journalist had hacked into the website to get the document; however, *La Presse* demonstrated that the video was in fact easily accessible. The computer has not, as yet, been returned to the reporter.

On November 2, 2016, the SQ said that it had tracked the cell phones of six journalists in 2013 in an attempt to identify a person alleged to have leaked information. At the time, Michel Arseneault, the head of the FTQ construction union, was under investigation by the SQ and when wiretapped conversations involving Mr. Arseneault were leaked to the media, Mr. Arseneault wrote to Stéphane Bergeron, Quebec's public security minister at the time, to ask him to investigate the leaks. He also wrote a letter of complaint to the SQ. Mr. Arseneault was under scrutiny by the Quebec anti-corruption inquiry at the time (the Charbonneau Commission) and was involved in a legal battle with the commission over wiretaps of his phone, gathered by police in an investigation unrelated to the anti-corruption inquiry. Mr. Bergeron has stated that he called the head of the SQ at the time, Mario Laprise, and asked him to look into it, although he did not ask for investigations of journalists. Concerns have been expressed in the media that the police investigation was launched on the same day Mr. Arseneault, the labour union leader, made a complaint. The SQ confirmed on November 3, 2016, that Radio-Canada journalist Alain Gravel, former host of the investigative program *Enquête*, had been the subject of monitoring of his cell phone logs for five years, from November 1, 2008, to October 1, 2013. Two other Radio-Canada journalists found out on November 2, 2016, that the SQ was tracking their cell phones. Marie-Maude Denis and Isabelle Richer, who are the current hosts of *Enquête*, have said that police were tracking incoming and outgoing calls in 2013. The SQ has said that the investigation was closed and sealed in 2014. The SQ has also said that new people and protocols are in place at the SQ since that time, that currently any investigation involving a reporter requires senior management approval, and that any application for a warrant would be signed by the director personally.

On February 13, 2015, Justice Nadelle of the Ontario Court of Justice issued a production order requiring VICE Media and journalist Ben Makuch to produce certain documents and data relating to communications with or concerning Farah Shirdon, an alleged ISIS member. Subsequently, there was a decision by Justice MacDonnell of the Ontario Superior Court of Justice in *R v Vice Media Canada Inc. and Ben Makuch*, 2016 ONSC 1961, addressing a challenge to the validity of the production order (it was upheld). Vice Media may be seeking to appeal this decision. The RCMP was not seeking the identity of confidential sources of the reporter but instead seeking copies of messages between the reporter and Farah Shirdon, whose identity was known.

In 2014, reporter Patrick Lagacé had a meeting with officers from the SQ who were investigating Ian Davidson, a Montreal police officer who it was alleged had tried to sell a list of informant names to the mafia. The investigators tried to get Mr. Lagacé to reveal the identity of a source. After he refused, he was told not to reveal the fact of the meeting with the police officers or he

might be charged with a crime. He did not comply with this and *La Presse* published an article about his experience.

In 2012, reporter Éric Yvan Lemay with the *Journal de Montréal* had his house searched in front of his children, his wife was followed, and he was targeted by 12 surveillance actions by the SQ after his articles revealed a lack of protection for medical files in a hospital in Saint-Hyacinthe. This health news reporter filmed himself manipulating documents to show how easy it was for a visitor to access records. No charges were laid. The Superior Court of Quebec refused to award damages to Mr. Lemay for these searches.

In August 2007, Joel-Denis Bellavance and Gilles Toupin, Parliamentary reporters for *La Presse*, were followed for nine days by RCMP officers who were trying to discover how the journalists obtained a report from Canadian spies providing a summary of a conversation between Adil Charkaoui that suggested a plan to hijack a plane. Mr. Charkaoui denied that this conversation ever took place. After nine days of surveillance, the police wanted to seek a warrant; however, Bob Paulson, the senior officer in charge, did not agree to pursue this warrant until the request was made again by his officers in 2008. The idea was ultimately not pursued for reasons unknown.

# ANNEX 4

#### **Annex 4: Federal and provincial responses**

##### ***Québec Response***

Québec has taken action to respond to these reports. Premier Philippe Couillard announced on November 1, 2016, that his government would immediately send to the province's three largest police forces directives aimed at making it more difficult to obtain a search warrant involving a journalist. He has indicated that, in the future, police will need to get approval from the Québec Public Prosecutor's Office before seeking a warrant involving a journalist, as is currently the case when such a warrant relates to a judge, a lawyer, or a legislator. At the November 14, 2016, meeting of the Federal/Provincial/Territorial Cybercrime Working Group, Québec officials indicated that the new process has been implemented as of November 9, 2016. Under it, journalists are added to the special process that already existed in the context of wiretap authorizations for judges, lawyers, and legislators. A new process has also been created for all other investigative authorities that requires approval from the Chief of Police and from a prosecutor and would apply where investigative authorities are sought in relation to journalists, lawyers, legislators, and judges.

Premier Couillard also announced that the province will set up an expert panel headed by a judge that will include representatives of the police and media. The panel's recommendations to the National Assembly could include legislative changes. The Quebec government has indicated the panel will be given the power of a commission of inquiry, including the ability to call witnesses and hold public audiences.

On November 3, 2016, Parti Québécois MNA Stéphane Bergeron announced he would step down from his role as public security critic until an investigation into the SQ activities in relation to journalists is concluded, as he was Quebec's public security minister in 2013 when the SQ was using investigative tools to track the cell phones of six journalists. He admitted that he called Mario Laprise, then head of the SQ, to ask him to look into media leaks, although he did not ask Mr. Laprise to investigate journalists.

##### ***Federal Response***

The Prime Minister has indicated publicly that the reports of surveillance of journalists are troubling and could point to a need for changes. He has also stated publicly that there are no journalists under surveillance by RCMP or CSIS, and he has indicated his support for the work of journalists and the importance of protection of their sources, as well as an openness to discussion of these issues, while also noting that he did not wish to pre-empt full discussion by forecasting what might come of the discussion. The Prime Minister also indicated that the RCMP and CSIS have strong safeguards and protections to respect the freedom of the press, and that approval of senior officials for requests for surveillance in sensitive sectors such as journalists, academics, and trade unionists is required, as well as judicial oversight.

The Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness, has stated publicly that he would also be open to discussing the rules that govern how and when police can appropriately investigate members of the media. He indicated that while it was



premature to speak to whether legislative amendments were needed, he would be looking at the Public Safety Canada Ministerial Directive regarding investigations involving journalists and national security to ensure that is appropriate and sufficient in the circumstances, and to be satisfied that it is being complied with by the RCMP. Minister Goodale indicated he would not comment on the specific case of Mr. Lagacé; however, he indicated that he was profoundly concerned by this type of file. It was also noted in news reports that since 2003 a federal Ministerial Directive has required police to pay special attention to the status of the news media in investigations relating to national security.

# ANNEX 5

s.21(1)(a)

s.23

**Annex 5: Background on Former Private Member's Bill C-426, *An Act to amend the Canada Evidence Act* (protection of journalistic sources and search warrants)**

**BACKGROUND**

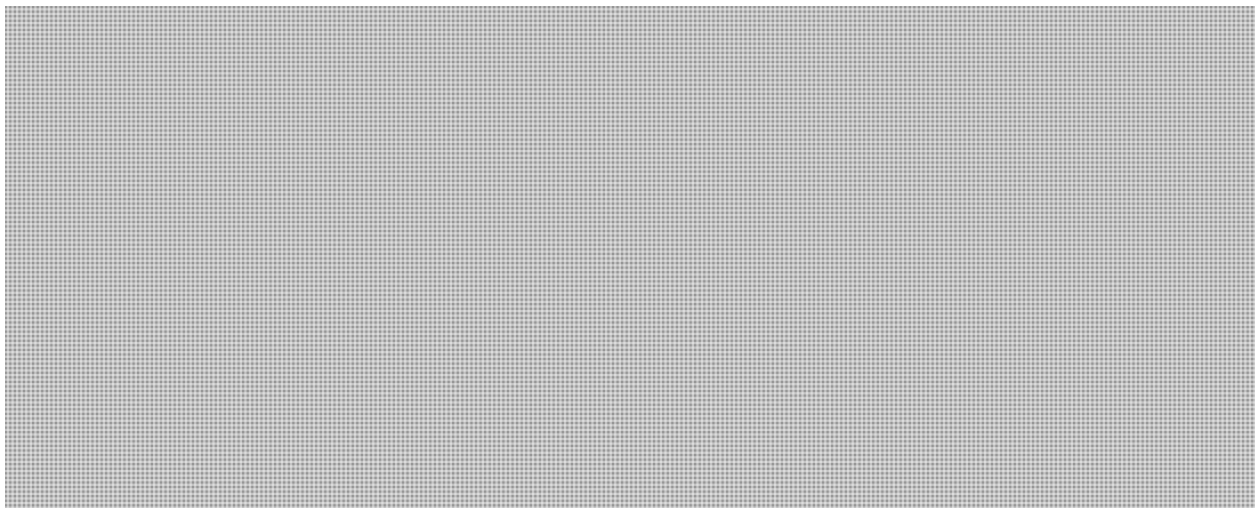
Former Private Member's Bill C-426, *An Act to amend the Canada Evidence Act* (protection of journalistic sources and search warrants), was introduced April 17, 2007, by BQ Member Serge Ménard. It died on the Order Paper on April 30, 2008, after being deemed reported back to the House without amendments.

Bill C-426 proposed reforms in the following areas:

1. Protect disclosure of journalistic sources and information that can identify journalistic sources;
2. Protect access to unpublished information in the possession of a journalist; and
3. Place restrictions on search warrants issued against the premises of a journalist or the media.

The sponsor of the Bill argued that the law, as it existed at the time, provided insufficient protection for journalistic practices, and he noted that many countries around the world had legislation aimed at ensuring such protection.

**CONSIDERATIONS**



***Common Law/Charter Considerations***

Canadian law recognizes that freedom of the press is fundamental to a democratic society and that freedom of expression, including freedom of the press and other media of communication, is protected under section 2(b) of the *Canadian Charter of Rights and Freedoms*.

In interpreting this provision, Canadian courts have recognized the unique position of the press in embodying the *Charter*-guaranteed freedom of expression. The public interest in maintaining freedom of expression is, however, balanced alongside other important objectives including the investigation and suppression of crime, the importance of openness, and the search for truth.

### Media-Source Privilege

Considerations in respect of privilege for journalists in relation to confidential sources also encompass issues around the availability of information in the courts, which is essential to ensuring the independence and impartiality of the courts and protecting the fair trial rights of an accused.

This privilege can be asserted by the media and will apply if four conditions are met:

1. The communication between the alleged source and the media representative must originate in a confidence that the identity of the source will not be disclosed;
2. This confidence must be essential to the relationship in which the communication arises;
3. The relationship must be one that is diligently fostered in the public good; and
4. Does the public interest in protecting the identity of the source outweigh the public interest in getting at the truth?

Under the first criteria, the journalist must expressly promise confidentiality to the alleged source. Evidence that this has occurred will establish the first criteria. The second criteria is easy to establish in a press context. Canadian courts have accepted that where a promise of confidentiality has been made, it is because the communication would not have been made without it. Canadian courts have approached the third criteria with flexibility. For example, they have noted that the relationship between a blogger and a source may be treated differently than a relationship between a professional journalist and a source. Generally speaking, however, the courts have recognized that relationships between professional journalists and their sources should be diligently fostered.

The final criteria requires the court to take into account various factors, including (but not limited to) the following:

- The value of the evidence being sought and the role it plays in the proceeding;
- The stage of the proceeding;
- The status of the journalist in the proceeding;
- Alternative means for obtaining the information claimed privileged; and
- The importance of the journalist's story.

**Pages 46 to / à 175  
are withheld pursuant to section  
sont retenues en vertu de l'article**

**69(1)(e)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**



Department of Justice  
Canada

Ministère de la Justice  
Canada

FOR INFORMATION

NUMERO DU DOSSIER/FILE #: 2016-024306

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: PROTECTED B

**TITRE/TITLE: Concluding Observations of the United Nations Committee on the  
Elimination of Discrimination against Women**

**SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY**

- On November 18, 2016, the UN Committee on the Elimination of Discrimination against Women publicly released its Concluding Observations on Canada's implementation of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).
- On October 25, 2016, a Canadian delegation appeared before the Committee. The delegation was led by Status of Women Canada and was comprised of officials from six other federal departments, including a representative from Justice Canada and a representative from each of Ontario and Québec.
- The Committee's observations and recommendations are non-binding but can have significant weight domestically and internationally. Although most of the issues raised by the Committee fall under the policy mandate of other federal departments and/or the provinces and territories, many of the Committee's recommendations implicate the policy mandate of Justice Canada. These include CEDAW implementation, awareness of the CEDAW in Canada, prostitution and human trafficking, access to justice, gender-based violence, the use of solitary confinement and the over-representation of certain populations in detention, violence and discrimination against Indigenous women and girls, child custody, and Canada's drug strategy.
- In accordance with Canada's usual practice, the Concluding Observations will be carefully considered by all relevant federal departments, and provincial/territorial governments. Departmental officials will participate in inter-departmental efforts to monitor progress in relation to the CEDAW's recommendations.

Soumis par (secteur)/Submitted by (Sector):

Public Law and Legislative Services Sector

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Soumis au CM/Submitted to MO: November 29, 2016



Department of Justice  
Canada

Ministère de la Justice  
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2016-024306

## MEMORANDUM FOR THE MINISTER

### Concluding Observations of the United Nations Committee on the Elimination of Discrimination against Women

#### ISSUE

This note provides information about the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women (Committee) issued on November 18, 2016 (Annex) following Canada's presentation of its Eighth and Ninth Periodic Report under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

#### BACKGROUND

The CEDAW is a UN human rights treaty that is dedicated to the protection of women's rights. Canada ratified the CEDAW in 1981, and the treaty entered into force on January 9, 1982. The CEDAW defines what constitutes discrimination against women and sets out a comprehensive set of obligations on States to combat gender inequality in the public and private spheres. As a State Party to the CEDAW, Canada must report to the Committee approximately every four years on the domestic implementation of its treaty obligations. A Canadian delegation then presents the report in person and engages in an interactive dialogue with the Committee in Geneva. Following the presentation, the Committee issues Concluding Observations to Canada on areas for improvement. The report, interactive dialogue, and Concluding Observations are all public.

A Canadian delegation appeared before the Committee on October 25, 2016. The delegation's presentation was based on two documents: Canada's Eighth and Ninth Periodic Report, which covers the period from November 2008 – December 2014 (filed in March 2015); and Canada's written response to the Committee's advance list of issues (filed on September 26, 2016). The Committee also considered issues raised in over 25 "shadow reports" prepared by civil society and Indigenous groups. The delegation was led by Status of Women Canada and was comprised of officials from six other federal departments, including a representative from Justice Canada and a representative from each of Ontario and Québec.

#### CONSIDERATIONS

Canada's delegation engaged in a constructive and respectful dialogue with the Committee. The Committee members were generally well-informed and asked pointed and at times critical questions about Canada's implementation of the CEDAW. The Committee also commended Canada for its openness in engaging with the Committee and for sending a knowledgeable delegation that was able to provide information to the Committee on a wide range of issues.

Prior to Canada's presentation, the Committee followed its usual practice of meeting privately with representatives from civil society and Indigenous groups. Over 20 representatives of Canadian-based groups travelled to Geneva for the presentation, and their concerns were reflected in many of the questions that the Committee posed to Canada.

The Committee's main areas of concern included access to justice and legal aid, women in detention and solitary confinement, prostitution and human trafficking, health and the national drug strategy, the impact of Canadian companies operating transnationally in the extractive sector on women's rights, gender-based violence against women, pay equity, access to child care, women's access to and conditions of employment, discrimination and violence against Indigenous women, the Inquiry into Missing and Murdered Indigenous Women and Girls. The Committee also addressed the visibility and awareness of the CEDAW in Canada including within the Canadian court system, as well as the coordination of shared federal, provincial, and territorial responsibilities in the implementation of CEDAW rights.

### ***The Concluding Observations of the Committee***

The Committee's observations and recommendations are non-binding (as a matter of both international and domestic law), but they can have significant weight domestically and internationally. For example, civil society organisations sometimes invoke the Committee's recommendations when engaging in public advocacy, or even as a contextual consideration in domestic litigation.

The Concluding Observations corresponded closely to the issues that the Committee raised during Canada's presentation. Although most of these issues fall under the responsibility of other federal departments and/or the provinces and territories, many of these recommendations fall within Justice Canada's policy mandate:

- The implementation of the CEDAW through legislation and cooperation with provincial and territorial governments, as well as the promotion of the justiciability of rights articulated in the CEDAW;
- Access to justice, including funding for civil legal aid and expanding the scope of the Court Challenges Program;
- Better data collection on the incidence of harmful practices and greater awareness-raising about ways to combat it;
- The disproportionate incarceration of Indigenous and Afro-Canadian women;
- Abolishing the practice of solitary confinement and limiting the use of administrative and disciplinary segregation;
- Enhancing efforts to combat all forms of gender-based violence against women;
- Reintroducing section 13 of the *Canadian Human Rights Act* to provide a civil remedy for victims of cyber violence;



- Fully decriminalizing women engaged in prostitution and assessing the impact of the current prostitution laws on women;
- Repealing mandatory minimum sentences for certain drug-related offences to reduce the punitive focus of Canada's drug strategy;
- Harmonizing federal and provincial/territorial legislation with respect to child custody determination; and
- Ratifying the *International Convention for the Protection of All Persons from Enforced Disappearance*, and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.

### **Media**

Canada's presentation received little, if any, mainstream media coverage. There was, however, coverage of the review on social media. Limited media attention is expected on the Concluding Observations. Status of Women Canada has the overall lead on communications.

### **CONCLUSION**

In accordance with Canada's usual practice, the Concluding Observations will be carefully considered by all relevant federal departments, provinces, and territories, and discussed at upcoming meetings of the Federal-Provincial-Territorial Continuing Committee of Officials on Human Rights, which are attended by Department of Justice officials. Departmental officials will also participate in federal inter-departmental efforts to monitor progress in relation to the Committee's recommendations and follow-up with the relevant sections within the Department.

The Committee requested that Canada file its Tenth Periodic Report in November 2020 in accordance with the Convention's regular reporting cycle. Therefore, Canada's next presentation to the Committee will not be until 2020 at the earliest.

### **ANNEXES**

Annex 1: UN Committee on the Elimination of Discrimination against Women "Concluding observations on the combined eighth and ninth periodic reports of Canada"

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## CEDAW/C/CAN/CO/8-9

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### Committee on the Elimination of Discrimination against Women

#### Concluding observations on the combined eighth and ninth periodic reports of Canada\*

1. The Committee considered the combined eighth and ninth periodic reports of Canada (CEDAW/C/CAN/8-9) at its 1433rd and 1434th meetings, on 25 July 2016 (see CEDAW/C/SR.1433 and 1434). The Committee's list of issues and questions is contained in CEDAW/C/CAN/Q/8-9 and the responses of Canada are contained in CEDAW/C/CAN/Q/8-9/Add.1.

#### A. Introduction

2. The Committee appreciates the submission by the State party of its combined eighth and ninth periodic reports. It also appreciates the State party's written replies to the list of issues and questions raised by the pre-sessional working group and welcomes the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party on its multi-sectoral delegation, which was headed by Ms. Linda Savoie, Senior Director General of Status of Women Canada, and also included representatives of the Department of Public Safety Canada; the Department of Indigenous and Northern Affairs Canada; the Department of Employment and Social Development Canada; the Department of Justice Canada; Status of Women Canada; the Department of Immigration, Refugees and Citizenship Canada; the Governments of Ontario and Quebec; and the Permanent Mission of Canada to the United Nations Office and other international organizations in Geneva.

#### B. Positive aspects

4. The Committee welcomes the progress achieved since its consideration in 2008 of the State party's seventh periodic report (CEDAW/C/CAN/7) in undertaking legislative reforms, in particular the adoption of the following legislation:

- (a) The Zero Tolerance for Barbaric Cultural Practices Act, in 2015;
- (b) The Protecting Canadians from Online Crime Act, in 2014;

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\* Adopted by the Committee at its sixty-fifth session (24 October-18 November 2016).

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- (c) The Family Homes on Reserves and Matrimonial Interests or Rights Act, in 2014;
  - (d) The Protection of Communities and Exploited Persons Act, in 2014;
  - (e) The Gender Equity in Indian Registration Act, in 2011.
5. The Committee welcomes the State party's efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, including the adoption or establishment of:
- (a) The Court Challenges Program, in 2017, and the Interim Federal Health Program, in 2015;
  - (b) The Action Plan to Address Family Violence and Violent Crimes against Aboriginal Women and Girls, in 2014;
  - (c) The National Action Plan to Combat Human Trafficking, in 2012;
  - (d) The Federal Framework for Aboriginal Economic Development, in 2009;
6. The Committee welcomes the fact that, in the period since the consideration of the previous report, the State party has ratified the Convention on the Rights of Persons with Disabilities, in 2010.

### **C. Principal areas of concern and recommendations**

#### **Parliament**

7. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites the House of Commons and the Senate, as well as provincial and territorial legislatures, in line with their mandates, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.

#### **Visibility of the Convention, the Optional Protocol thereto and the Committee's general recommendations**

8. The Committee remains concerned that the provisions of the Convention, the Optional Protocol thereto and the Committee's general recommendations are not sufficiently known in the State party, including by women themselves. The Committee is further concerned that the Convention may not be directly invoked before the domestic courts.

9. The Committee recommends that the State party:

- (a) Develop a sustainable strategy, including by allocating adequate financial resources, to disseminate the Convention, the Optional Protocol thereto and the Committee's general recommendations among all stakeholders, including women's organizations;
- (b) Enhance efforts to raise awareness among women about their rights under the Convention and corresponding remedies, targeting in particular women belonging to disadvantaged groups, including Aboriginal, Afro-Canadian, migrant, asylum seeking, refugee and disabled women;
- (c) Take the necessary legislative measures to give full effect to the Convention rights in its legal order and promote the justiciability of such rights;

(d) Promote capacity-building programmes for judges, prosecutors and lawyers on the Convention, the Optional Protocol thereto, the Committee's general recommendations and Committee views on individual communications and inquiry findings, to enable them to invoke those instruments before domestic courts and interpret domestic legislation accordingly.

#### **Application of the Convention under the federal system**

10. While the Committee is cognizant of the complex federal and constitutional structures in the State party, it reiterates (see CEDAW/C/CAN/CO/7, para. 11) that the federal Government is responsible for ensuring the implementation of the Convention and providing leadership to the provincial and territorial governments in that context. The Committee is concerned that the federal Government may not sufficiently use the available accountability mechanisms to ensure that the provincial and territorial governments establish legal and policy measures that are fully compliant with the Convention.

11. The Committee, taking into account the legal responsibility and leadership role of the federal Government in the implementation of the Convention, reiterates its previous recommendation (see CEDAW/C/CAN/CO/7, para. 12) that the State party establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the Convention throughout its territory. In this regard, the Committee recommends that the State Party consistently starts using conditional and targeted federal funding in order to make sure that transfer of payments to provinces and territories take into due account compliance with the provisions of the Convention, as already is the case for some of Canada's development assistance programmes.

#### **Legislative framework**

12. The Committee notes the various constitutional, legislative, statutory, administrative and policy provisions promoting gender equality and defining sex as a prohibited ground of discrimination. It further notes that a new Bill amending the Indian Act is currently being developed. However, the Committee remains concerned about continued discrimination against indigenous women, in particular regarding the transmission of Indian status, preventing them and their descendants from enjoying all the benefits related to such status.

13. The Committee recommends that the State party remove all remaining discriminatory provisions of the Indian Act that affect indigenous women and their descendants, and ensure that aboriginal women enjoy the same rights as men to transmit status to their children and grandchildren.

#### **Access to justice**

14. The Committee welcomes the repeal of section 67 of the Canadian Human Rights Act, in 2008, as well as the restoration of the Court Challenges Program, in 2017. The Committee is, however, concerned that:

(a) Financial support for civil legal aid programmes has considerably diminished in the past 20 years and has become increasingly restricted, affecting particularly women who are the primary users of civil legal aid;

(b) Income tests for eligibility limit civil legal aid to women living well below the poverty line; consequently denying low-income women access to legal representation and services;

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(c) Information is lacking on whether the newly reinstated Court Challenges Program, which provided funding for equality test cases, will be expanded to cover claims under section 7 of Canada's Charter of Rights and Freedoms to include economic and social equality issues related to poverty, whether it will fund equality rights challenges to provincial, territorial, and federal laws, and whether it will preserve its community-based structure.

15. In line with its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party:

(a) Increase funding for civil legal aid, and specifically earmark funds for civil law legal aid in the Canada Social Transfer in order to ensure that women have access to adequate legal aid in all jurisdictions, in particular women victims of violence, indigenous women and women with disabilities;

(b) Review criteria applied in income tests for eligibility to ensure access to civil legal aid, especially in the area of family law, to all women without sufficient means;

(c) Expand the mandate of the Court Challenges Program to include cases in provincial and territorial jurisdiction, as well as those under section 7 of Canada's Charter of Rights and Freedoms, and retain the Program's community-based structure.

#### **Views under the Optional Protocol**

16. The Committee notes with concern that its views concerning communication No. 19/2008, adopted under article 7 (3) of the Optional Protocol at its fifty-first session, in February 2012, have not been fully implemented and that the State party has not provided up to date information on action taken in the light of those views and recommendations.

17. The Committee urges the State party:

(a) To fully implement the Committee's views concerning communication No. 19/2008 regarding reparation and compensation for the author of the communication and inform the Committee without delay of all measures taken and planned as a consequence of its recommendations;

(b) To recruit and train more aboriginal women to provide legal aid to women from their communities, including in domestic violence cases and on property rights, and to review its legal aid scheme to ensure that aboriginal women who are victims of domestic violence have effective access to justice.

#### **Extraterritorial State obligation**

18. The Committee is concerned about:

(a) The negative impact of the conduct of transnational companies, in particular mining corporations, registered or domiciled in the State party and operating abroad on the enjoyment of the rights enshrined in the Convention by local women and girls;

(b) The inadequate legal framework to hold all companies and corporations from the State party accountable for abuses of women's human rights committed abroad;

(c) The limited access to judicial remedies by women victims, and the absence of an effective independent mechanism with powers to investigate complaints alleging abuses by such corporations;

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(d) The lack of impact assessments explicitly taking into account women's human rights prior to the negotiation of international trade and investment agreements.

19. The Committee recommends that the State party:

(a) Strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in relation to their activities abroad, including by requiring those corporations to conduct human rights and gender impact assessments prior to making investment decisions;

(b) Introduce effective mechanisms to investigate complaints filed against those corporations, including by establishing an Extractive Sector Ombudsperson, with the mandate to, inter alia, receive complaints and conduct independent investigations;

(c) Adopt measures to facilitate women victims of human rights violations access to justice and ensure that judicial and administrative mechanisms put in place take into account a gender perspective;

(d) Ensure that trade and investment agreements negotiated by the State party recognize the primacy of its international human rights obligations over investors' interests, so that the introduction of investor-State dispute settlement procedures shall not create obstacles to full compliance with the Convention.

**National machinery for the advancement of women and gender mainstreaming**

20. The Committee welcomes the creation, within the newly appointed Federal Government, of a full-fledged Minister of Status of Women. The Committee is, nevertheless, concerned about:

(a) The lack of clear and coherent coordination and management of gender mainstreaming efforts between the federal and the provincial/territorial level, the uneven level of implementation of the Convention at the provincial/territorial level, as well as the lack of comprehensive monitoring and impact evaluation mechanisms and measures;

(b) The absence of a comprehensive national gender equality strategy, policy and action plan that address the structural factors causing persistent gender inequalities;

(c) The fact that the indigenous women organizations are not included in the national nation-to-nation relationship on equal footing with other indigenous people's organizations;

(d) The closure of 12 of the 16 Status of Woman Canada regional offices, which has limited women's access to the services provided by Status of Women Canada, in particular in remote and rural areas.

21. The Committee recommends that the State party:

(a) Ensure that the Ministry of Status of Women is provided with a strong mandate and the human, technical and financial resources necessary to effectively coordinate gender equality plans, policies and programmes in all areas and at all levels of government, including through allocating earmarked resources to provincial and territorial governments;

(b) Develop a comprehensive national gender strategy, policy and action plan that addresses the structural factors causing persistent inequalities, including intersecting forms of discrimination, against women and girls, with a special focus on disadvantaged groups of women and girls, including First Nations, Inuit, Métis, Afro-Canadian, disabled, migrant, refugee, asylum-seeking, single parent, lesbian, bisexual, transsexual and intersex women and girls;

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(c) Make sure that indigenous women organisations are included in the national nation-to-nation relationship in all issues of relevance for women;

(d) Strengthen the implementation of gender equality policies at the provincial and territorial levels and ensure that all government bodies involved receive sustained guidance and support in their implementation efforts, including sufficient human, technical and financial resources;

(e) Reinforce monitoring mechanisms to comprehensively and regularly assess progress in the implementation of provincial and territorial gender equality policies, plans and programmes and evaluate the impact of such efforts, with a view to taking remedial action;

(f) Reopen the Status of Women Canada regional offices and ensure that they are adequately resourced to provide appropriate services to women, especially those living in remote and rural areas.

#### **Stereotypes and harmful practices**

22. The Committee welcomes the legislative and other measures taken to combat harmful practices, including child and forced marriage, female genital mutilation and crimes in the name of so-called honour. The Committee is, however, concerned that information on harmful practices and the ways to combat them in the State party is not readily accessible to many women.

23. The Committee recommends that the State party systematically collect disaggregated data on harmful practices in the State party and make information on ways to combat such practices widely available.

#### **Gender-based violence against women**

24. The Committee notes with appreciation that the Ministry of Status of Women is currently working with other Ministries to develop a federal strategy against gender-based violence. It also notes a number of federal criminal laws, complemented by provincial and territorial civil laws and policies, addressing gender-based violence against women, including against aboriginal women and girls. However, the Committee is concerned about:

(a) The continued high prevalence of gender-based violence against women in the State party, particularly against indigenous women and girls;

(b) The very low number of cases of gender-based violence against women reported to the police by victims;

(c) The low rates of prosecution and conviction and the lenient penalties imposed on perpetrators of gender-based violence against women;

(d) The lack of a national action plan, bearing in mind that the strategy will only apply at the federal level;

(e) The lack of shelters, support services and other protective measures for women victims of gender-based violence, which reportedly prevents them from leaving their violent partners;

(f) The lack of statistical data on gender-based violence against women, including domestic violence, particularly on investigations, prosecutions, convictions, sentences and reparation;

(g) The repeal of section 13 of the Canadian Human Rights Act, which provided a civil remedy to victims of cyber violence, and the enactment of the Protecting Canadians from Online Crime Act (2015), which penalizes the non-consensual

distribution of intimate images, but fails to cover all situations that were previously covered by section 13 of the Canadian Human Rights Act.

25. Recalling its general recommendation No. 19 (1992) on violence against women, the Committee recommends that the State party:

(a) Enhance its efforts to firmly combat all forms of gender-based violence against women, including domestic and sexual violence, paying particular attention to minority and indigenous women;

(b) Increase reporting by women of incidents of violence, including domestic violence, to law enforcement bodies by de-stigmatizing victims, provide capacity-building programmes and cultural training regarding aboriginal women for judges, prosecutors, police officers and other law enforcement officials on the strict application of criminal law provisions on violence against women and raise awareness among the general public of the criminal nature of such acts;

(c) Effectively enforce its criminal legislation at the federal, provincial and territorial levels, and ensure that all cases of violence against women are thoroughly and effectively investigated and that perpetrators are prosecuted and adequately punished;

(d) Expeditiously adopt a national action plan, in consultation with civil society organizations, especially aboriginal women's organizations, to combat gender-based violence against women and ensure that adequate human, technical and financial resources are allocated for its implementation, monitoring and assessment;

(e) Strengthen services for women victims of gender-based violence, including by establishing shelters throughout the territory of the State party and ensuring the availability of psychosocial rehabilitation and reintegration programmes;

(f) Systematically collect data on all forms of gender-based violence against women, disaggregated by sex, age, ethnic groups, including aboriginal women, and the relationship between the victim and the perpetrator, as well as on protection orders, prosecutions and sentences imposed on perpetrators;

(g) Review and amend legislation in order to provide an adequate civil remedy to victims of cyber violence and reintroduce section 13 of the Canadian Human Rights Act.

#### **Murdered and missing indigenous women and girls**

26. The Committee commends the State party's decision in 2015 to establish a National Inquiry into Missing and Murdered Indigenous Women and Girls, which was one of the main recommendations of the Committee's inquiry conducted in 2013 (CEDAW/C/OP.8/CAN/1). However, it is concerned about:

(a) The absence of any action plan or coordinated mechanism to oversee the implementation of the outstanding 37 recommendations issued by the Committee in 2015 (CEDAW/C/OP.8/CAN/1, paras. 216-220);

(b) The insufficient measures taken to ensure that all cases of missing and murdered indigenous women are duly investigated and prosecuted;

(c) The Terms of Reference of the national inquiry, which do not clearly require the application of a human rights based approach as called upon by the Canadian Human Rights Commission and which does not include any explicit mandate to review policing policies and practices and the criminal justice system, and does not provide any



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mechanism for the independent review of alleged cases of inadequate or partial police investigations;

(d) The lack of an explicit assurance of adequate support and protection provided to witnesses, and the lack of sufficient cooperation with indigenous women's organizations in the process of establishing the inquiry.

27. The Committee recommends that the State party fully implement, without delay, all recommendations issued by the Committee in the 2015 report on its Canada inquiry (CEDAW/C/OP.8/CAN/1, paras. 216-220), and:

(a) Develop an coordinated plan for the overseeing of the implementation of the outstanding 37 recommendations issued by the Committee in its report (CEDAW/C/OP.8/CAN/1, paras. 216-220), and by working in cooperation, as appropriate, with the Commission of the national inquiry, as well as indigenous women and their organizations, women's human rights organizations, and provincial and territorial governments;

(b) Ensure that all cases of missing and murdered indigenous women are duly investigated and prosecuted;

(c) Complement the Terms of Reference of the national inquiry to:

(i) Ensure the use of a human rights based approach ;

(ii) Ensure that the mandate of the inquiry clearly covers the investigation of the role of the Royal Canadian Mounted Police, Provincial police, Municipal police, and public complaints commissions across federal, provincial, and municipal jurisdictions;

(iii) Establish a mechanism for the independent review of cases where there are allegations of inadequate or partial police investigations;

(d) Ensure adequate support and protection to witnesses and strengthen the inclusive partnership with indigenous women's organizations and national and international human rights institutions and bodies during the conducting of the inquiry and in its implementation process.

#### **Root causes of violence and discrimination against indigenous women**

28. The Committee is concerned about the fact that indigenous women continue to suffer from multiple forms of discrimination, particularly as regards their access to employment, housing, education and health care and continue to live in poverty in the State party, as reflected by high poverty rates, poor health, inadequate housing, lack of access to safe water, low school-completion rates. It further notes with concern the low participation of indigenous women in the labour market, in particular in senior or decision-making positions, their disproportionately high unemployment rates and their lower pay compared with men and non-indigenous women. The Committee notes the State party's commitment to fully implement the United Nations Declaration on the Rights of Indigenous Peoples (2007). However, it remains concerned about the lack of a coherent plan or strategy to improve the socioeconomic conditions of indigenous communities, in particular indigenous women to combat the root cause of their vulnerability to violence as well as the lack of measures to break the circle of distrust between the authorities and indigenous communities, as was established by the Committee's inquiry (CEDAW/C/OP.8/CAN/1, paras. 218-219).

29. The Committee recommends that the State party, in consultation with indigenous peoples:

(a) Develop a specific and integrated plan for addressing the particular socioeconomic conditions affecting aboriginal women, both on and off reserves, including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence, and take effective and proactive measures, including awareness-raising campaigns, to sensitize aboriginal communities about women's human rights and to combat patriarchal attitudes and gender stereotypes;

(b) Implement the recommendations made by the Special Rapporteur on the rights of indigenous peoples following his mission to Canada in 2013 (see A/HRC/27/52/Add.2);

(c) Promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples;

(d) Ratify ILO Convention No. 169 (1989) on indigenous and tribal peoples.

#### Participation of women in peace processes

30. The Committee commends the State party's commitment to Security Council resolution 1325 (2000) and subsequent resolutions on women, peace and security, as well as the launch of its first national action plan on women, peace and security in 2010. However, the Committee is concerned about the lack of information regarding the elaboration and adoption of a second national action plan, as well as measures taken to address the gaps identified in the implementation of the first national action plan, which expired in March 2016.

31. The Committee encourages the State party to:

(a) Require that effective accountability mechanisms are in place in countries where the State party is supporting the implementation of Security Council resolution 1325 (2000) to ensure full participation of women in peace negotiations and reconstruction processes;

(b) Increase support to local women's organizations and networks that are active in peace initiatives and post-conflict reconstruction processes; and

(c) Expedite the adoption of the second national action plan on women, peace and security, and develop effective tools for measuring its outcomes;

(d) Increase the financial resources allocated to its Women, Peace and Security agenda and its National Action Plan, in line with the recommendations of the Global Study on the implementation of the Security Council resolution 1325 (2000).

#### Trafficking and exploitation of prostitution

32. The Committee welcomes the adoption of the National Action Plan to Combat Human Trafficking (2012-2016), the allocation of 25 million CAD to support projects addressing human trafficking at the federal and provincial/territorial levels, and the Supreme Court's Bedford judgment which led to the adoption of the Protection of Communities and Exploited Persons Act. It is, however, concerned about:

(a) The low rates of prosecution and conviction in cases of trafficking in women and girls;

(b) The lack of adequate mechanisms to identify and refer victims of trafficking in need of protection, in particular unaccompanied children, who are often

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considered as offenders and irregular migrants, rather than as victims, and the lack of sufficient data on victims of trafficking;

(c) The lack of information regarding the elaboration and adoption of the next national action plan, given that the first national action plan recently expired;

(d) The lack of systematically organized rehabilitation and reintegration measures, including access to counselling, medical treatment, psychological support and redress, including compensation, for victims of trafficking, in particular for indigenous and migrant women, who are not automatically entitled to temporary residence permits unless they cooperate with the police and judicial authorities;

(e) Reports that indigenous women and girls in foster care and in child welfare system are particularly vulnerable to sex trafficking;

(f) The insufficient efforts to prevent trafficking and exploitation of women and girls in prostitution and to address its root causes;

(g) The potentially increased risk to the security and health of women in prostitution, particularly indigenous women, brought about by the criminalization of prostitution under certain circumstances as provided for in the new legislation.

**33. The Committee recommends that the State party:**

(a) Investigate, prosecute and adequately punish all cases of trafficking in persons, especially women and girls;

(b) Strengthen measures to identify and provide support to women at risk of trafficking, in particular unaccompanied children;

(c) Improve access to data on victims of trafficking, disaggregated by sex and age;

(d) Expediently assess the impact of the National Action Plan to Combat Human Trafficking (2012-2016) and adopt a new plan for the period 2017-2020;

(e) Provide victims of trafficking with adequate access to health care and counselling and strengthen human, technical and financial resources to social work centres and targeted training for social workers dealing with victims of trafficking;

(f) Ensure that all victims of trafficking, irrespective of their ethnic, national or social background, obtain effective protection and redress, including rehabilitation and compensation;

(g) Address the root causes of trafficking and exploitation of women and girls in prostitution by adopting and implementing adequately resourced programmes and other appropriate measures to create educational and employment opportunities for women, particularly among the indigenous community, who are at risk of being trafficked or entering into or who are already engaged in prostitution and wish to leave it;

(h) Fully decriminalize women engaged in prostitution and assess the impacts of the law on Protection of Communities and Exploited Persons, notably on the health and security of women in prostitution.

**Participation in political and public life**

34. The Committee commends the State party on the appointment of a Cabinet of Ministers with gender parity. It also notes with appreciation the high number of women judges on the Canadian Supreme Court and other levels of the judiciary at the federal, provincial and territorial levels. However, it remains concerned about:

(a) The low representation of women in the House of Commons (26 per cent) and the Senate (37.3 per cent), in provincial and territorial legislative assemblies (26 per cent on average), as well as in locally appointed positions, such as mayors (28 per cent) or councillors (18 per cent);

(b) The structural obstacles to the realization of women's political rights and engagement in public life.

**35. The Committee recommends that the State party:**

(a) Strengthen its efforts to increase the number of women in elected decision-making bodies at the federal, provincial and territorial levels as well as in appointed positions at the local level, and to achieve equal representation of women in political and public life, including through the adoption of temporary special measures, such as quotas, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures;

(b) Adopt proactive measures, including temporary special measures, to address the structural obstacles to the realization of women's political rights and engagement in public life;

(c) Intensify awareness-raising campaigns for politicians, journalists, teachers and the general public, to enhance the understanding that the full, equal, free and democratic participation of women on an equal basis with men in political and public life is a requirement for the full implementation of women's human rights;

(d) Continue developing and providing targeted training and mentoring programmes on leadership and negotiation skills for potential women candidates and potential female leaders in the public sector, including those who are underrepresented, such as migrant, Aboriginal and Afro-Canadian women, as well as women belonging to other minorities and women with disabilities.

**Education**

36. The Committee welcomes the measures taken to ensure that gender equality permeates all levels of education and to overcome gender-stereotyped educational and vocational choices. However, the Committee notes with concern:

(a) The continuous lower educational and academic achievements of indigenous and Afro-Canadian women and girls and their high dropout rates at all levels of education;

(b) The significant barriers, including lack of grants and fragmented funding of educational programmes, which prevent disadvantaged and marginalized women and girls, in particular indigenous, Afro-Canadian women and those with children in need of childcare, and other women in remote and rural areas, from accessing post-secondary education;

(c) That women are still concentrated in traditionally female-dominated fields of study and career paths and are underrepresented in vocational training and in certain fields of higher education, such as mathematics, information technology and science;

(d) The lack of a comprehensive set of national guidelines or standards for education on sexual and reproductive health and rights curriculum, which resulted in severe discrepancies among provinces/territories in terms of curricula;

(e) The high number of girls who suffer from discrimination and sexual harassment in schools and the disproportionate number of migrant, refugee, asylum

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seeking and indigenous girls, as well as girls with disabilities, who continue to face difficulties in gaining access to high-quality education.

37. The Committee recommends that the State party:

(a) Increase grants and remove the funding cap on the Post-Secondary Student Support Program to ensure that indigenous women and girls have access to funding for post-secondary education;

(b) Strengthen its strategies to address discriminatory stereotypes and structural barriers that may deter girls from progressing beyond secondary education and enrolling in traditionally male-dominated fields of study, such as mathematics, information technology and science;

(c) Establish national guidelines or standards to harmonize sex education curricula among provinces and territories and allow the Federal Government to hold them accountable for implementing such guidelines or standards;

(d) Ensure that a zero-tolerance policy on violence and harassment that includes counselling services, awareness-raising efforts and effective reporting mechanisms, is effectively implemented in all schools;

(e) Continue to combat discrimination against disadvantaged groups of women and girls in access to high-quality education, including by adopting temporary special measures, and ensure the effective monitoring and evaluation of the impact of such measures, to inform remedial action.

#### Employment

38. The Committee is concerned about the slow progress made in the field of employment and more specifically about:

(a) The persistent gender wage gap in both the public and private sectors, which adversely affect women's career development and pension benefits, the lack of effective legislation on the principle of equal pay for work of equal value at the federal level, even in the public sector since the Public Sector Equitable Compensation Act (PSECA) has not delivered any results, and the lack of such legislation in the private sector in most provinces and territories, as repeatedly noted by the ILO;

(b) The continuing horizontal and vertical occupational segregation and the concentration of women in part-time and low-paid jobs, which is often due to their parallel traditional child raising and caretaking responsibilities, as well as the low representation of women in managerial positions in companies;

(c) The lack of affordable childcare facilities and the low use of parental leave by fathers;

(d) The prevalence of sexual harassment in the workplace, especially in male dominated sectors, such as Canada's Policing and military environments, and the lack of effective measures to deal with such harassment measures and to inform women of their rights;

(e) The limited access by indigenous, Afro-Canadian, migrant, refugee and asylum-seeking women, as well as women with disabilities, to the labour market;

(f) The practice of issuing employer-specific closed work permits, which makes it challenging for migrant workers, including caregivers, to leave abusive employment situations.

39. The Committee recommends that the State party:

(a) Take all necessary measures to narrow the wage gap, including by repealing the PSECA and by adopting legislation in the federal as well as in all provincial and territorial jurisdictions on the principle of equal pay for work of equal value, and by increasing the minimum wage which many women disproportionately receive;

(b) Adopt effective measures, including skills training and incentives for women to work in non-traditional professions, and temporary special measures to achieve substantive equality of women and men in the labour market and eliminate occupational segregation, both horizontal and vertical, in the public and private sectors, and adopt quotas to enhance the representation of women in managerial positions in companies;

(c) Create more opportunities for women to gain access to full-time employment, including by adopting a rights-based national childcare framework in order to provide sufficient and adequate childcare facilities, and strengthen incentives for men to exercise their right to parental leave;

(d) Develop a confidential and safe system for filing complaints related to sexual harassment in the workplace, and ensure that victims have access to effective mechanisms and remedies;

(e) Take into account the needs of disadvantaged groups of women, especially indigenous, Afro-Canadian, migrant, refugee and asylum-seeking women, as well as women with disabilities, and consider the use of targeted measures, including temporary special measures, to create further employment opportunities for women belonging to such groups;

(f) Discontinue the use of closed work permits in the Temporary Foreign Workers Program, thereby enabling women migrant domestic workers to freely change employers and improving their working and living conditions and reducing the risk of abuse; ensure that women migrant domestic workers who are victims of rights violations have effective access to justice, including legal aid; and take steps to facilitate access to permanent residency permits for women migrant domestic workers;

(g) Ratify ILO Convention No. 189 (2011) on decent work for domestic workers.

#### Health

40. The Committee notes the measures taken to facilitate access to legal abortion services. It remains concerned, however, at disparities in access to such services and to affordable contraceptives.

41. In line with its general recommendation No. 24 (1999) on women and health, the Committee recommends that the State party:

(a) Ensure access to legal abortion services in all provinces and territories;

(b) Ensure that invocation of conscientious objection by physicians does not impede women's access to legal abortion services;

(c) Make affordable contraceptives accessible and available to all women and girls, in particular those living in poverty and/or in remote areas.

42. The Committee welcomes that the State party intends to review the use and application of criminal norms to certain HIV/AIDS issues. This review will include the concerning application of harsh criminal sanctions (aggravated sexual assault) to women

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for non-disclosing their HIV status to sexual partners, even when the transmission is not intentional, when there is no transmission or when the risk of transmission is minimal.

43. The Committee recommends that the State party limit the application of criminal law provisions to cases of intentional transmission of HIV/AIDS, as recommended by international public health standards.

44. The Committee welcomes the commitment of the State party to review its drug policy with a view to shifting from a criminal to a public health and harm reduction approach. However, the Committee is concerned about the excessive use of incarceration as a drug-control measure against women and the ensuing female over-population in prison. The Committee is also concerned about the significant legislative and administrative barriers women face to access supervised consumption services, especially in light of the ongoing nation-wide opioid overdose crisis.

45. The Committee recommends that the State party:

(a) Define harm reduction as a key element of its federal strategy on drugs, and reduce the gap in health service delivery related to women's drug use, by scaling-up and ensuring access to culturally appropriate harm reduction services;

(b) Repeal the Respect for Communities Act and establish a transparent process for exemptions permitting the operation of supervised consumption services without risk of criminal prosecution of clients or service providers;

(c) Repeal mandatory minimum sentences for minor, non-violent drug-related offences;

(d) Take measures to prevent overdose deaths across the State party, including by exempting from arrest drug users who, when facing an overdose, call 911 to get assistance.

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#### Economic empowerment of women

46. The Committee notes the development of a National Poverty Reduction Strategy and a National Housing Strategy by the State party. However, it is concerned that women continue to experience significant levels of poverty, homelessness and hunger in the State party, especially First Nations women, Afro-Canadian women, Inuit and metis women, women of immigrant origin, women with disabilities, elderly women, and single mothers. It is also concerned at the lack of affordable quality childcare, the current severe housing shortage, in particular in aboriginal communities, and the high costs of rent and the impact thereof on women, especially low-income women with families.

47. The Committee recommends that the State party:

(a) Ensure that the National Poverty Reduction Strategy and the National Housing Strategy protect the rights of all women, with a focus on the most disadvantaged and vulnerable groups, by integrating a human rights and gender-based approach;

(b) Actively engage First Nations women in water systems management and regulation on reserves in order to assist populations that are at risk from poor water and sanitation conditions;

(c) Increase the amounts of transfer payments to provinces and territories, earmark sufficient funds specifically for social assistance, and make transfer payments to provinces and territories conditional on setting their social assistance rates at levels that are sufficient to ensure an adequate standard of living, and prevent discriminatory effects of inadequate incomes for women;

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(d) Intensify its efforts to provide sufficient numbers of affordable childcare facilities and affordable and adequate housing options, including in aboriginal communities, with priority being given to low-income women.

**Disadvantaged groups of women**

*Women in detention*

48. The Committee is concerned about:

(a) The high and rising incarceration rates of Aboriginal women and African Canadian women in federal and provincial prisons across Canada;

(b) The classification of many women in the federal prison system at a maximum-security level, thus restricting their access to work and community programmes and to aboriginal healing lodges;

(c) The high rates of HIV/AIDS among female inmates;

(d) The many cases of administrative or disciplinary segregation, sometimes for long periods of time, including of detainees with mental illness, and reported cases of solitary confinement;

(e) The continuing presence of male guards in female prisons, which increases the risk of sexual harassment or assault and violates the right to privacy of women in detention.

49. The Committee recommends that the State party:

(a) The State party address the issue of disproportionate incarceration of aboriginal and Afro-Canadian women, including by increasing the use of alternative measures for those who commit non-violent offences;

(b) Redesign its classification system for women in the federal prison system to ensure their access to work and community programmes as well as to aboriginal healing lodges;

(c) Expand care, treatment and support services to women in detention living with or vulnerable to HIV/AIDS, including by implementing prison-based needle and syringe programmes, opioid substitution therapy, condoms and other safer sex supplies;

(d) Abolish the practice of solitary confinement, and effectively limit the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such measure for women with serious mental illness;

(e) Discontinue the practice of employing male guards as front-line staff in women's institutions.

**Marriage and family relations**

50. The Committee welcomes the adoption of the Family Homes on Reserves and Matrimonial Interests or Rights Act. However, it is concerned that the Act does not apply to the First Nations reserves that have enacted their own First Nations matrimonial real property laws under the Act or the First Nations Land Management Act.

51. The Committee recommends that the State party adopt guidelines or minimum standards which should be incorporated by First Nations to ensure women's matrimonial property rights.



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52. The Committee is concerned about the lack of harmonization of legislation at the federal and provincial and territorial levels with respect to child-custody determination, as the federal Divorce Law still includes the highly problematic "maximum contact" provision and makes no mention of domestic violence. The Committee is further concerned at evidence of reduced or even cessation of child support orders that can result from shared custody orders or agreements, which in practice are not always followed and do not necessarily reflect the reality of time and cost allocation between parents.

53. The Committee recommends that the State party take the necessary measures to harmonize federal and provincial/territorial legislation with respect to child-custody determination, ensuring that the ongoing problem of violence against women be taken into account in any such efforts, and use the new British Columbia Family Law Act to guide future legislative reforms, especially with respect to the definition of domestic violence and the best interest of the child as regards "maximum contact". The Committee further calls upon the State party to employ means to closely monitor the economic welfare of children following divorce, so as to prevent strategic/opportunistic claims for shared custody, and ensure that child support payments are not inappropriately reduced.

#### Beijing Declaration and Platform for Action

54. The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.

#### 2030 Agenda for Sustainable Development

55. The Committee calls for the realization of substantive gender equality, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.

#### Dissemination

56. The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official languages of the State party, to the relevant State institutions at all levels (federal, provincial and territorial), in particular to the Government, the ministries, Parliament and the judiciary, to enable their full implementation.

#### Ratification of other treaties

57. The Committee notes that the adherence of the State party to the nine major international human rights instruments<sup>1</sup> would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance, to which it is not yet a party.

<sup>1</sup> The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

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**Follow-up to the concluding observations**

58. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 21 (a), (b), (d) and 27 (a) above.

**Preparation of the next report**

59. The Committee invites the State party to submit its tenth periodic report in November 2020. In case of delay, the report should cover the entire period until the time of its submission.

60. The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN/2/Rev.6, chap. I).

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